

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM HENRY JACKSON, CV F 05- 0450 AWI WMW HC
Petitioner, FINDINGS AND RECOMMENDATIONS RE
MOTION TO DISMISS
v. [Doc. 14]
D. G. ADAMS,
Respondent.

Petitioner is a prisoner proceeding with a petition for writ of habeas corpus pursuant to U.S.C. Section 2254. The matter was referred to a United States Magistrate Judge pursuant to U.S.C. § 636(b)(1)(B) and Local Rule 72-302. Currently pending before the court is Respondent's motion to dismiss, filed June 22, 2006. Petitioner filed an opposition to that motion on July 10, 2006.

PROCEDURAL HISTORY

Petitioner alleges that he was convicted of kidnaping for the purpose of robbery and sentenced to life with the possibility of parole in 1979. Petitioner has not been granted parole.

1 Petitioner applied for relief in Los Angeles County Superior Court on August 28, 2002, which the
2 court denied on October 29, 2002. Petitioner filed another action in Los Angeles Superior Court on
3 November 25, 2003, which the court denied on February 24, 2004. Petitioner filed a petition for
4 writ of habeas corpus with the California Court of Appeal on November 24, 2003, which the Court
5 of Appeal denied on November 25, 2003. Petitioner filed a petition with the California Supreme
6 Court on December 22, 2003, which the court denied on February 16, 2005.

7 **LEGAL STANDARD**

8 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of
9 1996 (AEDPA). The AEDPA imposes various requirements on all petitions for writ of habeas
10 corpus filed after the date of its enactment. Lindh v. Murphy, 521 U.S. 320, 117 S.Ct. 2059, 2063
11 (1997); Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997) (en banc), *cert. denied*, 118 S.Ct. 586
12 (1997). The instant petition was filed on March 16, 2005, and thus, it is subject to the provisions of
13 the AEDPA.

14 The AEDPA imposes a one year period of limitation on petitioners seeking to file a federal
15 petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1). As amended, Section 2244, subdivision
16 (d) reads:

17 (1) A 1-year period of limitation shall apply to an application for a writ of habeas
18 corpus by a person in custody pursuant to the judgment of a State court. The
limitation period shall run from the latest of –

19 (A) the date on which the judgment became final by the conclusion of direct
20 review or the expiration of the time for seeking such review;

21 (B) the date on which the impediment to filing an application created by
22 State action in violation of the Constitution or laws of the United States is removed, if
the applicant was prevented from filing by such State action;

23 (C) the date on which the constitutional right asserted was initially recognized by
24 the Supreme Court, if the right has been newly recognized by the Supreme Court and made
retroactively applicable to cases on collateral review; or

25 (D) the date on which the factual predicate of the claim or claims presented
could have been discovered through the exercise of due diligence.

26 (2) The time during which a properly filed application for State post-conviction or
27 other collateral review with respect to the pertinent judgment or claim is pending
shall not be counted toward any period of limitation under this subsection.

28

1 In most cases, the limitation period begins running on the date that the petitioner's direct
2 review became final. The AEDPA, however, is silent on how the one year limitation period affects
3 cases where direct review concluded *before* the enactment of the AEDPA, such as occurred in this
4 case. The Ninth Circuit has held that if a petitioner whose review ended before the enactment of the
5 AEDPA filed a habeas corpus petition within one year of the AEDPA's enactment, the Court should
6 not dismiss the petition pursuant to § 2244(d)(1). Calderon v. United States Dist. Court (Beeler),
7 128 F.3d 1283,1286 (9th Cir.), *cert. denied*, 118 S.Ct. 899 (1998); Calderon v. United States Dist.
8 Court (Kelly), 127 F.3d 782, 784 (9th Cir.), *cert. denied*, 118 S.Ct. 1395 (1998). In such
9 circumstances, the limitations period would begin to run on April 25, 1996. See, Patterson v.
10 Stewart, 251 F.3d 1243, 1245 (9th Cir. 2001).

11 **DISCUSSION**

12 Respondent moves to dismiss this petition for writ of habeas corpus on the ground that it is
13 barred by the statute of limitations. Respondent contends that both of Petitioner's claims challenge
14 his sentencing imposed at the time of his conviction. Therefore, argues Respondent, the statute of
15 limitations began running on April 25, 1996, and this petition, filed March 16, 2006, was filed nearly
16 nine years too late. Petitioner opposes the motion.

17 The court finds that Respondent's contentions lack merit. Contrary to Respondent's
18 assertion, both of Petitioner's claims are based on events occurring well after Petitioner's conviction
19 and sentencing. In his first claim, Petitioner claims that his indeterminate sentence has become
20 unconstitutional under the controlling comparative case analysis because he has now served more
21 than 26 years in prison. In his second claim, Petitioner claims that he is entitled to both prompt
22 term fixing and a constitutionally proportionate term as well as a separate parole release hearings.
23 As with his first claim, this claim does not challenge the sentencing imposed at the time of his
24 conviction. Therefore, Respondent is incorrect in claiming that Petitioner was required to have
25 raised his claims within one year from the time the statute of limitations began running.

26 Based on the foregoing, IT IS HEREBY RECOMMENDED that Respondent's motion to
27 dismiss be DENIED and that Respondent be ordered to respond to the petition on the merits.
28

1 These Findings and Recommendation are submitted to the assigned United States District
2 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 72-304 of the
3 Local Rules of Practice for the United States District Court, Eastern District of California. Within
4 thirty (30) days after being served with a copy, any party may file written objections with the court
5 and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate
6 Judge's Findings and Recommendation." Replies to the objections shall be served and filed within
7 ten (10) court days (plus three days if served by mail) after service of the objections. The court will
8 then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are
9 advised that failure to file objections within the specified time may waive the right to appeal the
10 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11

12 IT IS SO ORDERED.

13 **Dated:** February 7, 2007
14 mmkd34

/s/ William M. Wunderlich
15 UNITED STATES MAGISTRATE JUDGE

16

17

18

19

20

21

22

23

24

25

26

27

28